

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7233 CS PCB GO 06-07 OGSR Communications Services Tax Simplification Law
SPONSOR(S): Governmental Operations Committee and Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
<u>Orig. Comm.: Governmental Operations Committee</u>	<u>4 Y, 0 N</u>	<u>Williamson</u>	<u>Williamson</u>
<u>1) Finance & Tax Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
<u>2) State Administration Council</u>	<u></u>	<u>Williamson</u>	<u>Bussey</u>
<u>3) _____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<u>4) _____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<u>5) _____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for information received by The Department of Revenue pursuant to the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill will not have a significant fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000, the Legislature enacted the "Communications Services Tax Simplification Law."¹ The act combined seven different state and local taxes and fees and replaced those revenues with a two-tiered tax composed of a state tax and a local option tax on communications services. The new tax structure took effect October 1, 2001.

In 2001, the Legislature created a public records exemption for information received by the Department of Revenue pursuant to the Communications Services Tax Simplification Law. All information contained in returns, reports, accounts, and declarations received by the department, in addition to investigative reports and information and letters of technical advice, are exempt from public records requirements. The exemption authorizes release of the information for limited purposes. Any person who willfully and knowingly releases the exempt information for purposes not authorized by law commits a misdemeanor of the first degree.² Pursuant to the Open Government Sunset Review Act,³ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes grammatical changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 213.053, F.S., to remove the repeal date.

Section 2 amends s. 202.37, F.S., to make a cross-reference change.

Section 3 amends s. 206.27, F.S., to make a cross-reference change.

Section 4 amends s. 409.2577, F.S., to make a cross-reference change.

Section 5 amends s. 607.0130, F.S., to make a cross-reference change.

Section 6 amends s. 608.703, F.S., to make a cross-reference change.

Section 7 amends s. 617.01301, F.S., to make a cross-reference change.

Section 8 amends s. 896.102, F.S., to make a cross-reference change.

Section 9 provides an effective date of October 1, 2006.

¹ Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.

² A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed \$1,000 (s. 775.083(1)(d), F.S.).

³ Section 119.15, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate state governmental expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Finance and Tax Committee adopted one amendment which changed the effective date of the bill from October 3, 2006 to October 1, 2006, as suggested by the Governmental Operations Committee. The change has been incorporated into the bill analysis.